

JERROLD NADLER, New York
CHAIRMAN

ZOE LOFGREN, California
SHEILA JACKSON LEE, Texas
STEVE COHEN, Tennessee
HENRY C. "HANK" JOHNSON, JR., Georgia
TED DEUTCH, Florida
KAREN BASS, California
CEDRIC L. RICHMOND, Louisiana
HAKEEM S. JEFFRIES, New York
DAVID CICILLINE, Rhode Island
ERIC SWALWELL, California
TED LIEU, California
JAMIE RASKIN, Maryland
PRAMILA JAYAPAL, Washington
VAL DEMINGS, Florida
LOU CORREA, California
MARY GAY SCANLON, Pennsylvania
SYLVIA GARCIA, Texas
JOSEPH NEGUSE, Colorado
LUCY McBATH, Georgia
GREG STANTON, Arizona
MADELEINE DEAN, Pennsylvania
DEBBIE MUCARSEL-POWELL, Florida
VERONICA ESCOBAR, Texas

DOUG COLLINS, Georgia
RANKING MEMBER

F. JAMES SENSENBRENNER, JR., Wisconsin
STEVE CHABOT, Ohio
LOUIE GOHMERT, Texas
JIM JORDAN, Ohio
KEN BUCK, Colorado
JOHN RATCLIFFE, Texas
MARTHA ROBY, Alabama
MATT GAETZ, Florida
MIKE JOHNSON, Louisiana
ANDY BIGGS, Arizona
TOM MCCLINTOCK, California
DEBBIE LESKO, Arizona
GUY RESCHENTHALER, Pennsylvania
BEN CLINE, Virginia
KELLY ARMSTRONG, North Dakota
GREG STEUBE, Florida

ONE HUNDRED SIXTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6216

(202) 225-3951
judiciary.house.gov

May 24, 2019

The Honorable Kevin McAleenan
Acting Secretary
Department of Homeland Security
300 7th Street SW
Washington, D.C. 20528

Dear Acting Secretary McAleenan:

We write to express our profound concern and sadness over the death of yet another child in Customs and Border Protection (CBP) custody this week. This is the fifth death of a child in CBP's custody in the last six months and raises significant questions about the conditions in CBP's short-term holding facilities, the length of time children are held in such facilities, and the general suitability of such facilities for families and children. To address these and other concerns, we request that you open an investigation immediately and brief the Members of the House Judiciary Committee during the week of June 3.

According to information released by CBP to the Committee and the media, the most recent child to die in CBP custody was 16 year-old Carlos Gregorio Hernandez Vásquez. Carlos was apprehended crossing the border on May 13, 2019, and detained in CBP custody for seven days despite agency rules requiring children to be transferred to Health and Human Services custody within 72 hours. After being in custody for six days, Carlos said he felt ill and was treated with Tamiflu.¹ However, on the seventh day in custody he was found unresponsive during a welfare check.

Due to the seriousness of this tragedy and the many questions that remain, we request you initiate an investigation into this incident, as well as the four other deaths in CBP custody over the last few months. The investigation should assess CBP policies or practices, training curricula, staffing, and potential systemwide errors that may have contributed to the children's deaths. The investigation should also identify policies and practices designed to protect health

¹ Graham Kates, *Guatemalan Teen Boy is Latest Migrant to Die in U.S. Custody*, CBS News (May 21, 2019), <https://www.cbsnews.com/news/guatemalan-teen-boy-migrant-child-dies-in-border-patrol-custody/>.

and safety and whether they were employed, as well as policies and practices that may be unnecessarily exposing children and families to particularly harsh terrain.

For example, the Department of Homeland Security Inspector General issued a report in September of 2018 describing the impact of CBP's policy of turning away asylum seekers.² That report concluded that the practice of turning away asylum seekers at international bridges and "limiting the volume of asylum-seekers entering at ports of entry" may have caused an increase in unauthorized crossing attempts.³ One asylum seeker interviewed by the Office of Inspector General stated that "she had been turned away three times by an officer on the bridge before deciding to take her chances on illegal entry."⁴ These facts are particularly troubling considering clear instructions from former Secretary Nielsen that asylum seekers should present themselves at ports of entry instead of crossing between the ports.⁵

The investigation should also examine the appropriateness of holding children in Border Patrol stations, which were designed to hold adults, and not children, for no more than 72 hours. In December, you appeared before the Senate Judiciary Committee, where you testified that CBP's short-term holding cells are "incompatible" with increased migration of family units and unaccompanied children. You added that "[o]ur Border Patrol stations were built decades ago to handle mostly male single adults in custody, not families and children."⁶

As part of the Fiscal Year 2019 DHS appropriations bill, the agency was given \$415 million for humanitarian relief, specifically for medical care, transportation, and improvements to CBP processing centers along the border.⁷ We are concerned that these funds may have not been adequately used to address systemic issues that have contributed to the death of asylum-seeking children. The fact that deaths have continue to occur three months after such funding was issued is troubling.

Thank you for your prompt attention to this matter. We look forward to your timely response as it relates to our briefing request, and notification that an investigation has been opened.

² DHS Office of Inspector General, *Special Review – Initial Observations Regarding Family Separation Issues Under the Zero Tolerance Policy* (Sep. 27, 2018), <https://www.oig.dhs.gov/sites/default/files/assets/2018-10/OIG-18-84-Sep18.pdf>.

³ *Id.*, at 7.

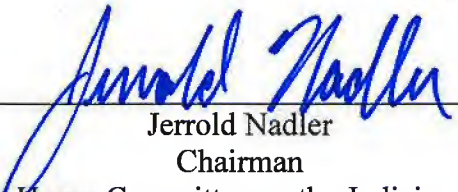
⁴ *Id.*

⁵ Neena Satija, *The Trump administration is not keeping its promises to asylum seekers who come to ports of entry*, Texas Tribune (July 5, 2018), <https://www.texastribune.org/2018/07/05/migrants-seeking-asylum-legally-ports-entry-turned-away-separated-fami/>.


⁶ *Id.*

⁷ House Appropriations Committee, *Consolidated Appropriations Act Division by Division Summary*, at 1 (Feb. 2014), <https://appropriations.house.gov/sites/democrats.appropriations.house.gov/files/documents/Summary%20of%20Conference%20Report.pdf>.

Sincerely,



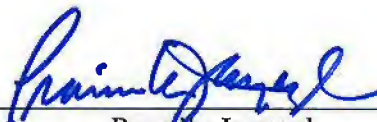
Jerrold Nadler
Chairman
House Committee on the Judiciary



Zoe Lofgren
Chair
Immigration and Citizenship Subcommittee
House Committee on the Judiciary



Mary Gay Scanlon
Vice Chair
House Committee on the Judiciary



Pramila Jayapal
Vice Chair
Immigration and Citizenship Subcommittee
House Committee on the Judiciary

cc: The Honorable Doug Collins, Ranking Member, House Committee on the Judiciary
 The Honorable John V. Kelly, Acting Inspector General, Department of Homeland
 Security
 The Honorable John P. Sanders, Acting Commissioner, U.S. Customs and Border
 Protection